DIGEST OF OTHER RECENT VIRGINIA DECISIONS.

(Head notes prepared by M. P. Burks, State Reporter.)

CITY OF DANVILLE v. ROBINSON.—Decided at Wytheville, June 20, 1901.—*Cardwell*, J:

1. MUNICIPAL CORPORATIONS—*Defective sidewalks—Notice—Suit by councilman.* The fact of being a member of a city council does not *per se* charge the councilman with notice of defects in the sidewalks of the city, nor debar him from recovering damages occasioned by its neglect to repair its sidewalks.

2. CONTRIBUTORY NEGLIGENCE—*Question for jury—Effect of verdict.* Whether a plaintiff has been guilty of contributory negligence is a question for the jury under proper instructions from the court, and their finding will not be disturbed where the evidence is such that reasonable men might fairly differ as to whether there was such negligence or not.

3. MUNICIPAL CORPORATIONS—*Defective highways—Use by public—Dangers not obvious.* Travellers are not forbidden by law to use a public highway known by them to be unsafe, unless the unsafe condition is such as to make the danger obvious and imminent.

ALLISON v. ALLISON'S EXECUTORS AND OTHERS.—Decided at Wytheville, June 20, 1901.—*Keith*, P:

1. ELECTION—*Inconsistent rights or claims.* Election is the obligation imposed upon a party to choose between two inconsistent or alternative rights or claims in cases where there is a clear intention of the person from whom he derives one that he should not enjoy both.

2. ELECTION—*Husband and wife—Bond for wife's benefit—Substitution of other securities—Gifts—Burden of proof.* Where a husband, at the time of marriage, executes his bond to a trustee for the benefit of his intended wife reserving the right to substitute other property in lieu of the bond, in whole or in part, provided she first consents thereto in writing, and at a fair value to be agreed on between her and him, and to be endorsed as a credit on the bond, the subsequent purchase by him of a small amount of stock, and the transfer thereof to her trustee will not, in the absence of such an endorsement, and of all evidence whatever of such an intention, be deemed a payment on the bond. The burden of showing such an intention is on the party asserting it.

HOFFMAN v. PLANTERS NATIONAL BANK.—Decided at Wytheville, June 20, 1901.—*Cardwell*, J. Absent, *Keith*, P:

1. NEGOTIABLE INSTRUMENTS—*Alteration—Incompleteness—Negotiable Instrument Act.* The unauthorized change of the name of the payee of a negotiable note is a material alteration which renders the note void as to the maker. The fact that the note is incomplete, when altered, does not affect the result. Sections 124 and 125 of the Negotiable Instrument Act (Acts 1897-'8, p. 910), as to alterations of such instruments, is simply declaratory of the former law on the subject.

2. NEGOTIABLE INSTRUMENTS.—*Alterations—Incompleteness.* The delivery of an incomplete negotiable note by the maker to a third person to be negotiated does not constitute the latter the agent of the former to make alterations, in parts of the note already complete, which are necessary to give effect to the note for the purpose for which it was intended.

3. NEGOTIABLE INSTRUMENTS—*Change of relation of parties—Alteration—Release.* If, by mistake, the payee of a negotiable note signs the note as maker, whereby it becomes a complete note payable to the order of the maker, the delivery of the note to the intended maker, to be negotiated by him, does not authorize him to substitute his name as payee, and then endorse the note, and if such substitution is made, without other authority from the maker, it releases him.

DOYLE'S ADMINISTRATOR AND OTHERS v. BEASLEY AND OTHERS.—Decided at Wytheville, June 20, 1901.—*Cardwell.* J. Absent, *Keith,* P:

1. CHANCERY PRACTICE—*Laches—Presumption of payment.* The presumption, arising out of the lapse of time, the conduct of the parties interested, and the circumstances surrounding them, that the debt asserted in this cause, which has been past due over twenty-two years, has long since been paid, seems irresistible. Certainly, any other conclusion would, at best, be purely conjectural.

NELSON v. TRIPLETT, TRUSTEE.—Decided at Wytheville, June 20, 1901.—*Cardwell,* J:

1. STATUTE OF LIMITATIONS—*Unsuccessful action of ejectment.* An unsuccessful action of ejectment does not stop the running of the statute of limitations against the plaintiff's claim.

2. CHANCERY PRACTICE—*Laches.* When from delay any conclusion that the court might arrive at must, at best, be conjectural, and the original transactions have become so obscure by lapse of time, loss of evidence and death of parties as to render it difficult, if not impossible, to do justice, a court of equity will not interfere, whatever may have been the original justice of the claim.

WATKINS v. VENABLE.—Decided at Wytheville, June 20, 1901.—*Buchanan,* J:

1. APPEAL AND ERROR—*Quo warranto—Court of Appeals.* This court has no original jurisdiction in cases of *quo warranto,* nor has any judge thereof jurisdiction to issue the writ and send the case to the Circuit Court to be proceeded with, as in cases of injunction.

2. QUO WARRANTO—*Process—Parties.* Under our statute, the first notice that a defendant has of a *quo warranto* proceeding is the writ itself, and he does not become a party to it until the writ is awarded. If a circuit court refuses to award the writ, the defendant is no party to the proceeding in that court, and cannot be made a party on a writ of error from this court, and process against him here, if awarded, will be quashed.

3. QUO WARRANTO—*Discretion.* Neither at common law under modern practice, nor under our statute, is the applicant for a writ of *quo warranto* entitled to it as a matter of absolute right; but whether it shall be awarded or not is subject,